

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**Region 3 Headquarters**  
**1400 South 19th**  
**Bozeman, MT 59718**

**APRIL 15, 2004**

**Commission Members Present:** Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Lane; Mike Murphy; John Brenden.

**Fish, Wildlife & Parks Staff:** Jeff Hagener, Director; FWP Department personnel.

**Guests:** Ted Washburn, Gallatin Wildlife Association; Vann Boccadon; Robin Cunningham, FOAM; Joe Murphy, Neil Consultants; Philip VanRensberg, International Matling Co; Representative Diane Rice, HD33; Joe Gutkoski, Montana River Action; Glenn Hockett, Gallatin Wildlife Association; Ron Tschida, Bozeman Daily Chronicle; John Youngberg, Montana Farm Bureau and Montana Grain Growers; David Brown, Source Giant Springs, Inc; Representative Jim Keane, HD36; Chris Kaltenbach, International Malting Co; Gates Watson, The Conservation Fund; John & Leona VanNorman, Giant Springs; Jerry Sorenson, Plum Creek; Nate Hall, Avista; Sanford Shrout, MSHA; Worth Nixon; Tim Swant, Avista; Robert Rasmussen, Trust For Public Lands; Mary Ellen Schnur, MOGA; Neven Zugg, Elk Mountain Outfitters; Don Clark; Rebel Dene; Corinne Selby, Candy Hinz.

**Topics of Discussion:**

1. **Opening - Pledge of Allegiance**
2. **Approval of March 11, 2004 Commission Minutes**
3. **Approval of Commission Expenses through March 31, 2004**
4. **River Recreation Management ARM Rule – Tentative**
5. **Land Projects Update – Informational**
6. **Private Lands / Public Wildlife - Informational**
7. **Future Fisheries Special Drought Funding Cycle – Final**
8. **International Malt Company Water Lease – Final**
9. **Water Program Update – Informational**
10. **Swan Valley Conservation Easement Proposal – Endorsement**
11. **Bull River Land Acquisition/Conservation Easement Proposal – Informational**
12. **Trumpeter Swan Translocation – Final**
13. **2004 Moose, Sheep & Goat Quotas – Tentative**
14. **2004 Lion Quotas – Tentative**
15. **2005 Moose & Sheep Auction Rules and Deer & Elk Auction/Lottery Rules–Tent**
16. **Public Opportunity to Address Issues Not Discussed at this Meeting**

**Pat Flowers, FWP Region 3 Supervisor**, welcomed the Commissioners to Region 3, and thanked them for allowing the region the opportunity to escort them on the tour of some of the projects and sites the Region is involved in. **Dan Walker, FWP Commission Chair**, thanked Flowers and the Region for the tour, and for hosting the Commission meeting at their facility. **Walker** explained to the audience that the Commission elected to meet regionally throughout the year to provide Montanans from all areas an opportunity to attend meetings.

**1. Opening - Pledge of Allegiance.** **Chairman Dan Walker** called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

**2. Approval of March 11, 2004 Commission Minutes.**

*Action: Brenden moved and Mulligan seconded the motion to approve the minutes of the March 11, 2004 meeting. Motion carried.*

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#### ANNOUNCEMENTS

**Jeff Hagener, FWP Director**, reminded the Commission and Staff that the May, 2004 Commission meeting will be held in Miles City. The meeting is on May 12 and a regional tour will be conducted on May 13.

**Hagener** said a tour of Whiskey Ridge – both ground and air - may be planned in conjunction with the June commission meeting for those interested in attending. As the meeting is on the 10<sup>th</sup>, the tour will likely be on the 9<sup>th</sup> or the 11<sup>th</sup>.

The 2004 WAFWA Summer Conference, hosted by the Idaho Department of Fish & Game, is being held July 23-30 in Boise. A registration form has been provided to the Commissioners to fill out and return to Reg Peterson if they choose to attend and part of the Conference.

The 2004 Tri-State Meeting will be held in August in Afton, Wyoming. August 16 is a travel day and the actual meetings are on August 17 and the morning of August 18.

The USFWS has ruled that the sage grouse petition warrants further review for consideration of listing them. This puts them in a 270-day timeframe of when they have to make a listing determination. They will look at all of the state's assessments and conservation practices to determine if they will list Sage Grouse as a threatened species. The Department is putting together information to indicate Montana does not think it is necessary because of the status we have, and our conservation plan. A draft EA and a draft final plan on sage grouse will be provided to the Commission, and by August or early September the Department will ask for concurrence from the Commission on the final plan.

This year the numbers of applications are up 2,000 for the general B-10 licenses and up 1,000 for the general B-11 licenses. As of March 15, 5,109 outfitter sponsored big game combination B-10 applications were received. The target for Outfitter Sponsored B10 was 5800. As of yesterday, we have sold 5,321 Outfitter Sponsored B-10s. The Outfitters Sponsored Deer Combination B11s that were undersold as of March 15 are now sold out.

Commissioner **Brenden** requested a work session to discuss and clarify various topics; **Walker** stated he also had items for discussion at a work session. **Hagener** said that since the May meeting schedule is light, a work session could possibly be held then – **Walker** agreed.

### 3. Approval of Commission Expenses through March 31, 2004.

*Action: Lane moved and Murphy seconded the motion to approve the March, 2004 Commission expenses as presented. Motion carried.*

**4. River Recreation Management ARM Rule – Tentative. Charlie Sperry, FWP River Recreation Management Specialist,** asked for comment on the proposed tentative Administrative Rules created for managing the social and recreational aspects of Montana's rivers. These proposed rules include the suggestions and concerns the Commission addresses at the March Commission meeting. Copies of the proposed rules have been provided to the River Recreation Advisory Council (RRAC) as well as to the Commission. Sperry said he had received comments from only two of the Advisory Council members - Robin Cunningham and Larry Copenhaver.

**Mulligan** said he does not feel the rules reflect the recommendations of the RRAC; that there are significant differences. He said he could not identify how the Department proposes to integrate the recommendations of the RRAC into work plans. He recognized that some of the clarity concerns are due to mechanics, and to adaptation into legal format, however, he said clearer language is necessary as far as how the Department plans to address the rivers when this document is complete. He added that the prioritization process that was developed by the RRAC has not been captured. More work needs to be done, and more comments need to be received from RRAC members to determine how the rest of the advisory group perceives these proposed rules; perhaps they feel their recommendations are reflected in these rules. **Mulligan** said he is willing to let the proposed rules go out as tentative to see what comes back.

**Bob Lane**, FWP Legal Council, responded that he feels the proper information has been captured, that statutory language does lend a different "look" to their recommendations. **Lane** said he feels the process has been captured for dealing with the issues without binding the Commission.

**Brenden** expressed frustration as to the difficulty in reading and interpreting rules. It is cumbersome to seek out definitions for application to the verbiage contained in the rules. He added that he does not feel Eastern Montana has been duly represented.

**Walker** said he fears a mechanism will be put into place that will make it difficult for future Commissions to deal with. He thinks roadblocks may have been created. He is concerned that only 2 responses were received; perhaps they are worn out from working on this long, involved process. He said if more time is needed, or a work session would help, it may save time in the long run to do so. He said the tentative process will provide guidance and clarification. **Mulligan** said if there are misgivings by the Commission as to what the motive and intent of the group was, a work session would alleviate any fears of why policy recommendations were made. As far as creating roadblocks for future commissioners, **Mulligan** said that is not the motive at all. **Walker** suggested a work session on this topic; **Mulligan** and **Bob Lane** concurred. **Murphy** agreed, saying that river issues are crucial in Montana.

**Sperry** said the RRAC has worked long and hard on editing the many drafts of this policy (19 drafts), as well as the Administrative Rules, and they are weary. He is not surprised to hear back from only 2 people. He said the group has already said what they have to say, or they are worn out. He added that converting the policy into administrative rule language has been challenging. When the decision was made to go with administrative rule rather than policy, it was determined that policy best represented the recommendations. The more succinct rule format removes some of the less essential elements. He reviewed the rule to assure essential core elements were included.

When **Mulligan** asked if the policy “goes away” once the rule is adopted, **Lane** said the agency follows the rule as opposed to a policy, so a policy is no longer relied upon. The Department can also suffer legal ramifications if there is no rule in place. **Bob Lane** reiterated that he feels the recommendations from the Advisory Council have been included in a way that does not bind the Commission.

**Sperry** said when these administrative rules were drafted, they were based on the comments made regarding the policy document that was reviewed at the last Commission meeting, but if the comfort level is not there with the policy format, he is not sure amending the administrative rules will help.

**Brenden** asked to amend RULE VI CREATION OF CITIZEN ADVISORY COMMITTEES, Section 2(a) to include “*business owner*” in the “...examples of interest categories...”. Mulligan said that business owner was originally included, and that the intent of this section of the rule is to try to diminish the public’s distrust of the Department’s motives in selecting people for the Council.

**Walker** said however the group is chosen, at the culmination of the effort there will be criticism toward both the product and the persons involved in decisions. He suggested as part of this rule (Section IV), it would be wise to stipulate legal public notice of the creation of this commission. **Bob Lane** agreed.

**Mulligan** said he would like to encourage the working group to review this draft rule closely, and attend a work session to discuss any concerns. He stressed that the RRAC be advised that new ideas are not being sought; only comments on what has already been developed. He said it is imperative to be on the same level with the group, or at least inform them why there are differences. If the Department purposely made a decision to remove or modify items, they need to explain their rationale. **Bob Lane** said items may be captured in the rule but are not easily recognizable, or the rule may be streamlined too much. **Sperry** asked how far back to go on this – the last draft policy was developed following the March Commission meeting and reflected the comments made at that time. **Mulligan** questioned why there is a policy process in the first place, if it is to become a rule and not a policy.

Representative Diane Rice, House District 33 and RRAC member, said she appreciates the fact this issue will be addressed again at a work session. She had had objections to the original plan and had not signed off on it. She said things have been left out of the rule, and public comments were not adhered to or respected in the process. She stated that the resources belong to the people of MT, and the Commission must listen to the people. She does not feel that was done during the comment period. This is a serious issue and will inflict serious economic consequences on the rural communities. Rice said this is a huge “step in power” for FWP. She said if a plan is not working or has dire economic consequences, that plan must have the ability to be rescinded; now she sees only that it will be adopted

at the discretion of FWP. Throughout the meetings, there was great emphasis on the credibility of data, and now the rule reads “the absence of data does not abdicate the department’s responsibility to manage recreation on rivers”. She said when a tourism member left the Council, tourism – the number 2 industry in Montana - was no longer represented.

Rice said the members of the committee are exasperated that the work they have done has been totally altered. They have been told all along that the Commission and Department could do whatever they wanted - that’s why there were only two comments received. She said this process needs to move slowly.

Robin Cunningham, Fishing Outfitters Association of Montana, agreed with Rice. He said it is important to honor the RRAC recommendations. He has received several comments from members of the group expressing concerns relative to difficulty in tracking the policy to the rule. He said he appreciates the opportunity to participate in the work session.

**Walker** and **Brenden** stressed that definitions in both the rule and the statute should be readable/understandable to the common person. **Sperry** said the definitions stem from the professional field of river management; he is hesitant to change the definitions. As an example, the word “permit” is used so broadly that it needs definitions for the different applications. **Sperry** said as part of the work session, suggestions for wording simplification could be proposed, and definitions could be made more understandable. **Walker** suggested Sperry work on simplification - as an example, **Walker** said there is no definition of a “river use day”.

*No action taken. A work session will be held in conjunction with the June meeting to further discuss this issue.*

**5. Land Projects Update – Informational. Glenn Erickson, FWP Field Services Division Administrator**, provided charts comprising of land acquisition projects the Department is involved in. He briefly described the status of each project. (Charts included in April Commission file folder). Projects included on these charts have been through the Divisions and are now assigned to Lands. He said there are other projects in the regions, but they have not gone through the divisions yet. **Erickson** said Field Services intends to provide updates quarterly. **Brenden** requested appraisals for Brush Lake, which Erickson will provide when complete.

**6. Private Lands / Public Wildlife – Informational. Alan Charles, FWP Landowner Sportsmen Coordinator**, said the PLPW Council has established four subcommittees who are diligently working. The Funding Subcommittee is looking at concepts and ideas geared toward generating revenue for the program, the Incentive Subcommittee is looking at current benefits and incentives within the program to determine if modifications or new incentives and benefits are necessary, the Option Subcommittee is researching new ways to work with new landowners and non-resident landowners, and the Enforcement Subcommittee is reviewing the application of the program and looking for new and different ways to improve efficiency by looking at the broader perspective of hunting access in Montana, as well as enforcement presence.

The PLPW Council Chairman has asked that the subcommittees complete their work by May 15, then submit the concept reports they plan to present to the full Council for consideration. The Council Chair has requested that the Department review and analyze the reports for fiscal or program impacts.

The next PLPW meeting will be held in Helena on June 15-16 where they will convene as a full Council to begin deliberations on draft recommendations for public comment. Recommendations will be finalized at the meeting scheduled for August 30 – 31 in Dupuyer. Following that meeting, the report that goes to the Governor and legislators will be written for any legislation that may need to be drafted.

**Charles** said the Council was briefed on the preliminary results of the hunter / landowner survey that was completed by the Department early this spring. He also provided the Council with the Block Management / Hunting Access Enhancement Program informational document developed to assist in heightening public awareness of the upcoming sunset provisions and basic information relative to the programs.

**Walker** said the Department has ten years experience with the Block Management program, and with its impending expiration, it needs to be addressed in the upcoming legislature. He said the survey results were astounding in terms of improvement, and the success of the program, as measured by hunter satisfaction, was impressive. He is pleased with the numbers of non-resident sales since that is an important funding source.

**Brenden** observed that when the Department purchases an easement on property already enrolled in block management, the landowner may also receive compensation by the Block Management program. He feels the landowners realize they are forfeiting something when they enter into easement agreements and perhaps this double payment system needs to be evaluated. **Walker** said this concerns him as well, however, the payment is intended to deal with impacts. **Brenden** suggested this be discussed at the work session, to which **Walker** and **Mulligan** concurred. **Mulligan** added that the Department does not legally pay landowners for access.

**Mulligan** questioned Charles if an overlay map indicating leases and block management areas had been developed. **Charles** replied that the Department is working with the Board of Outfitters in developing a map that would depict all of the private lands where licensed outfitters are authorized to operate, however, it has nothing to do with PLPW or Block Management even though it does show what is happening with hunting access.

**7. Future Fisheries Special Drought Funding Cycle – Final.** **Chris Hunter, FWP Fisheries Division Administrator**, said two applications were received this year for the 2004 drought funding for instream enhancement projects.

One project involves the Lamp-Nelson Ditch on the Boulder River which diverts between 10 and 20 cfs from October 1st through mid-December for watering stock on two ranches. This project will develop off-canal wells for the ranches. The ranches have agreed to close the ditch headgate as soon as irrigation season is complete. This will help the rainbow and brown trout in their migration. Closing the headgate will resolve a potential for ice build-up associated with a fish screen already approved for installation in the ditch.

The second project is in the Jefferson River drainage. It leaks a tremendous amount of water, affecting the rainbow and brown trout. This project proposes to reseal the Creeklyn Ditch and Jefferson Canal through the use of a liquid sealing agent called Canal Seal. It will be applied after the first cutting of hay in one drainage to see what effect it has.

*Action: **Mulligan** moved and **Murphy** seconded the motion to approve the two proposed projects for drought funding as recommended by the Future Fisheries Review Panel and the Department. Motion carried.*

**Hunter** stated that the Bureau of Reclamation is checking into alternatives more permanent than Canal Seal.

**8. International Malt Company (IMC) Water Lease – Final.** **Chris Hunter, FWP Fisheries Division Administrator**, said the hope had been that both the water lease agreement and the pipeline easement would be ready for decision at this meeting, however, negotiations are still in progress regarding the easement, so today's action need only concern the water lease.

**Hunter** said the Governor's office had approached FWP in 2002 regarding this proposed barley malting plant in Great Falls. With some minor alterations to operations at the fish hatchery, the necessary volume of water could be provided with no impact to the fishing public. An agreement has been developed that is suitable to both parties.

When whirling disease first became an issue, FWP took measures to secure hatchery water sources so they would not be contaminated with whirling disease. The Department secured the buildings at Giant Springs, as well as developed a collection system in the spring. IMC plans to place a pump on one of the wet wells in order to pump about 100 feet to where they would horizontally bore underneath the river, then pump from there up to the malting plant.

**Walker** questioned whether the Commission should act on the water lease and make it's approval (should it be approved) contingent upon the pipeline easement, or not make any decision until both agreements are ready. **Hunter** said it can be done either way. **Brenden** asked if it would cause problems if the Commission waited until the next meeting to act on the entire proposal. **Becky Dockter, FWP Legal Counsel**, said IMC is hoping to conduct testing during the next month, and they are anxious to at least get the lease agreement approved. She said the pipeline easement agreement is nearly finalized. She feels it would be appropriate to move on the water lease today and make it contingent upon the pipeline easement agreement.

**Mulligan** said he is concerned about the impact of drilling under the river. He said he has no problem with leasing the water, but would like additional time to determine that drilling will not impact the spring. He would like to see the studies. **Hunter** said the spring is approximately 200 yards from where they plan to drill. **Lane** is hesitant to approve the lease with the pipeline easement contingency when there are still concerns on the effects drilling may have on the spring.

**Walker** asked why approving the lease would affect testing. **Dockter** replied that the Department has not allowed IMC to go on the property without an easement agreement that would provide protection

in case something goes awry. She said they will be testing soils and the appropriateness of where to bore under the river, which will reflect how drilling may or may not affect the Spring. **Walker** said it does not make sense to argue whether or not the springs will be affected without the test results. **Dockter** said in both the agreement and the proposed pipeline easement, there are protection provisions if the springs are affected, and IMC is solely responsible for repair of the springs.

Joe Murphy, Neil Consultants, said the geotechnical test identifies soil conditions and composition of rock formation. Upon completion of testing, all holes will be sealed off with bentonite. He said these tests are no different than testing already conducted by DEQ when they drilled monitoring wells and conducted soil tests for the investigation of an underground fuel tank.

**Lane** asked if this geotech testing will tell them if there are aquifers there or voids to bore through, etc. Joe Murphy said he would be reluctant to say that the tests will give clear representation of what is underneath the river – the tests provide a profile from one side of the river to the other. He said there are fissures throughout the area and the tests will show some representation of those fissures. Several directional drilling expeditions have already been done through the river – a crude oil pipeline of similar size is half mile from where they propose to drill. Joe Murphy said that the minimum depth of directional drilling would be 20 feet below the riverbed.

**Mulligan** asked if the EA covers the test drilling. Joe Murphy said the directional drilling was covered – the entire pipeline from the Giant Springs wet well to the IMC site was part of the EA. **Mulligan** asked if an additional review is needed. **Dockter** replied a supplement has been written as to how it would affect the hatchery. The EA addressed only the portion of the drilling that was on FWP property – once it goes under the river, it becomes the jurisdiction of DNRC. **Dockter** said she assumes DNRC completed an EA prior to issuing the permit to IMC for drilling under the river.

*Action: **Lane** moved and **Brenden** seconded the motion to give IMC permission to proceed with geotech test drilling within the next 30 days.*

*Discussion on Motion:* **Commissioner Murphy** asked if the Department can obtain DNRC's findings. Joe Murphy said DNRC has gone through an EA for the entire route of the pipeline, and he added that the regulatory agencies involved with permitting directional drilling under the river have all signed off and issued permits.

**Mulligan** said he will agree to the testing with the understanding that the Department will oversee the project to assure the hatchery is not adversely affected. He said there has not been any assessment for affects of the bore hole on FWP's site, so someone – an engineer - from the Department needs to make sure testing is conducted in a prudent manner.

David Brown, President of Source Giant Springs, said their company bottles water from the springs. They have been in business since 1993, and are concerned about this project and the boring under the river. He added they have been designated as the official water of the Lewis & Clark Bicentennial. Brown said the riverbed has been cracked by the Sweetgrass Arch, therefore is a unique section of the riverbed. The only reason there is a spring there is because of this cracking of the ground which allows the water to come up. He said there is another large flow of water above Giant Springs from another fissure in the middle of the river. They are concerned that the horizontal boring through the fractured



sandstone is going to create another opening which might possibly divert the spring and ruin it. He said it is very fragile. Brown said when the new fish hatchery was constructed in 1985, workers encountered so much water from exposing cracks in the sandstone, that they had to install a 14" drain pipe from the foundation of the new building to the river. In 1993, that pipe was flowing at full capacity, and now it is about a quarter full, indicating change, possibly due to the construction done on the hatchery, as well as drought conditions. There are 300 tons of minerals leached out of the aquifer daily. There are huge caverns underneath, and it is not uncommon for a spring such as this to have sinkholes that form naturally.

Jim Keane, Representative from HD36, also representing Representative George Golie of HD44, said that both Representatives have submitted letters to the Commission expressing their concerns (included in April Commission file folder). He said the EA conducted on this project didn't address the area of the Sweetgrass Arch. This is a critical issue for the state of Montana, and when decisions are rushed, bad things can happen. There is the potential to do damage to one of the finest natural resources in Montana. Keane asked that the Department not rush into this project, and to look at it carefully. He encouraged the Commission to take more time, and gather information to assure no damage is done.

John Youngberg, MT Farm Bureau, also speaking on behalf of the Montana Grain Growers, supports this project. He agreed that it is necessary to proceed with caution, but he said another thing the Commission needs to keep in mind is the benefit this malting plant would have on the agricultural industry. Montana grain growers currently ship malt barley out of state; this would make a huge impact on the farm economy. He urged the Commission to move ahead with it.

Philip VanRensberg, IMC Project Manager, said they, too, are concerned about what is under the river. They are not looking for shortcuts; they are committed to finding the best way across the river. He said they need to do some testing, and if it does not look good, they will look for other solutions. He said IMC does not want Giant Springs to dry up - their commitment is to Giant Springs. They will look for other alternatives if it looks "iffy".

*Action on Motion: Motion carried.*

**9. Water Program Update – Informational.** Chris Hunter, FWP Fisheries Division Administrator, said the water resources program has been an important part of the fisheries program for over 30 years. The focus is on protecting the instream flow rights that have been granted to the Department by the legislature, and through other processes. We also attempt to obtain water leases, put water back in streams, and are involved in adjudication process. The IMC project is one that has been involved for the last two years. The Painted Rocks Reservoir is a state owned project developed for irrigation and has never been fully subscribed by irrigators. FWP has purchased 5,000 acre feet per year on a long-term contract, and another 10,000 acre feet per year on a short-term contract. The contract expires in September of this year, so the Department is working with DNRC and the Painted Rocks water users to renew the contract. Trout Unlimited has brought substantial money to this new lease as well. FWP is presently involved in two significant water rights applications issues. Both are in the Missouri River Basin, which is closed for appropriation of surface water because the basin is over-appropriated. Ground water can be appropriated as long as it does not adversely affect the rights of existing water users. FWP has instream flow rights in both rivers. Both applicants were seeking ground water rights, and in both cases it was felt there was evidence that the granting of that right

would adversely affect the instream flow rights that we hold. DNRC held hearings on both of these applications with the aid of independent hearings officers, and in both cases, our position was upheld.

EQC has considered a number of water related issues; FWP has monitored their meetings and discussions. **Bob Lane** said a briefing was held regarding water programs FWP retains, which provided a description of water rights and what the Department is doing in the field. He said the public seemed to have resolved the controversy of whether FWP should have water rights or not - they were satisfied that FWP was involved with water rights. The prediction of the future is that any upcoming controversy will be between new developers and senior users. **Lane** said there are 2 issues looming, and the Department will be a part of these issues as they have to do with senior water right holders, such as irrigators, and PPL for hydropower. The two issues are the connections between surface water and ground water, and adjudication.

**Lane** said people are converting or adding new uses by drilling ground water wells for sprinkler irrigation systems. He said this is fine as long as the connection between ground water and surface water is considered when issuing new permits. Where this kind of conversion would be done, the ground water is connected to the surface water. The effects are two-fold - one is immediate when surface water is used, and one is delayed when ground water is used, however, they come out of the same system.

DNRC looks at applications to determine there are no adverse effects. DNRC verifies applications – they identify applications that may present problems. Any concerns are placed on preliminary claims when they come out. The pace of adjudication is taking way too long. EQC and the advisory council are trying to create a system that will be completed in 15 years. FWP is not a decision maker in this, but is one of the major players.

Commissioner **Murphy** said these issues have been looked at extensively at the Water Resources Association, and the relationship between ground water and surface waters has become more apparent. John **Lane** asked if and when objections will arise as to domestic wells. **Bob Lane** said there is a significant difference between irrigation and domestic wells.

**10. Swan Valley Conservation Easement Proposal – Endorsement.** **Jeff Herbert, FWP Wildlife Division Assistant Administrator**, introduced **Alan Wood, FWP Region 1 Wildlife Mitigation Coordinator**, who said this proposed conservation easement consists of 5,700 acres of timberland in the Swan River Valley owned by Plum Creek Timberlands. This area consists of two bull-trout spawning waters, provides habitat for black bear and grizzly bears, and is at the northern end of whitetail winter range. The Forest Legacy grant would provide \$3 million, and easement monitoring funds would be paid for with interest from the Wildlife Mitigation Trust Fund. The Thompson Fisher easement agreement would serve as a template for this easement. **Wood** also noted that the tax base would not be affected. Plum Creek would still log the land, but they are required to meet BMP standards. Plum Creek also volunteered to maintain forest standards as they are presently doing.

**Mulligan** asked how Forest Legacy funds are prioritized, and if this easement would divert money from other projects. **Wood** said the funds are administered by the US Fish & Wildlife Service. Applications are submitted, and after a committee ranks them, they are submitted for national ranking.

The Swan River Valley ranked 5<sup>th</sup> out of 200 nationwide. This application was submitted for FY04 money, so was submitted over a year ago.

If this is not approved, **Wood** said the money is returned to the Forest Service, and parcels of land may be converted into residential developments. Appraisals have not been conducted yet, but Plum Creek would likely receive between \$600-800 per acre from FWP. **Wood** said in addition to the conservation easement, year round public access would be available under the Open Land Policy of Plum Creek. Plum Creek does not hold oil and gas rights, however they would retain mineral rights. Meridian holds the oil and gas rights. **Walker** asked if timber harvest is being conducted on the state-owned sections to which **Hagener** replied yes, it is managed under DNRC.

*Action: **Murphy** moved and **Lane** seconded motion to approve negotiations with Plum Creek Timberlands for the purchase of conservation easements and limited fee acquisitions of Plum Creek lands in the Swan River Valley. Motion carried. Four in favor – one opposed. (**Brenden** opposed).*

**11. Bull River Land Acquisition / Conservation Easement Proposal – Informational. Alan Wood, FWP Region 1 Wildlife Mitigation Coordinator** said this proposal for a conservation easement in the drainage between Lake Creek and Bull River was brought before the Commission two years ago as a request for permission to begin negotiations. The Department has been working with Plum Creek through the Conservation Fund and Avista to fee purchase this property owned by Plum Creek. This area provides public recreation, bull trout / cutthroat fishing, has a large wetland complex, winter range for elk and moose, bear habitat, and fisheries.

The Department received a \$1 million grant last year from the USFWS through their Habitat Conservation Program because Plum Creek put a habitat conservation plan on their land for native fish, which qualified Montana to request grants that provide conservation for the species over and above what Plum Creek's plan offered. The Conservation Fund and Avista used their Clark Fork settlement monies. FWP will combine the \$1 million with another request of \$3.6 million, and the 25% of non-federal required match from Avista in the form of a conservation easement.

The end results are that FWP would end up with 1200 acres that are currently owned by Plum Creek, 160 acres currently owned by Avista, and the conservation easement of 560 acres currently owned by Avista. The total cost is \$4.6 million for the acquisition, plus 1.5 million donation from Avista. Management funds for managing the property would primarily come from Avista through their ongoing mitigation program. Estimated costs of management are \$3000 for the first couple of years for weed control and securing road closures on Plum Creek property, then \$500-\$1000 per year. The Department is hoping to go to public with an EA this summer.

**12. Trumpeter Swan Translocation – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator,** said a pair of Trumpeter Swans nested on wetlands near Lincoln in the upper Blackfoot River Valley in 2003. The female was killed but the eggs were retrieved and incubated. Three cygnets joined with the adult male and they migrated to wetlands near Jackson Hole, Wyoming for the winter. If they return, the plan is to release female cygnets for the male to pair up with. A total of 10 cygnets could potentially be released. He said it is difficult to establish a migration pattern with these birds. There is widespread support for this program.

**Murphy** said if these become listed, significant land requirements will need to be established. **Herbert** does not feel this will be a problem.

*Action: **Walker** moved and **Brenden** seconded the motion to approve the translocation of up to 10 Trumpeter Swan cygnets to wetlands in the upper Blackfoot Valley in late summer 2004 as a method of conditioning these birds to previously demonstrated migratory patterns exhibited by the adult male swan (and/or his offspring) that nested in the valley in 2003. The number of cygnets and the release sites would be contingent upon the status and location of the adult male Trumpeter Swan and the yearling birds. Motion carried.*

**13. 2004 Moose, Sheep & Goat Quotas – Tentative.** **Jeff Herbert, FWP Wildlife Division Assistant Administrator** presented the tentative quotas.

### **Moose**

Region 1 and Region 2 - Moose – no changes to current quotas

*Action: **Murphy** moved and **Mulligan** seconded the motion to approve the Region 1 and Region 2 tentative Moose quotas as recommended by the Department. Motion carried.*

### Region 3 - Moose

HD315-10 – Reduce antlerless quota from 2 to 1

HD323-10 – Increase antlerless quota from 25 to 30

HD326-10 – Increase antlerless quota from 7 to 12

HD327-10 – Reduce antlerless quota from 10 to 7

HD327-20 – Reduce antlered bull permits from 10 to 7

HD340-10 – Increase antlerless quota from 6 to 10

HD340-20 – Increase antlered bull quota from 6 to 10

*Action: **Mulligan** moved and **Murphy** seconded the motion to approve the Region 3 tentative Moose quotas as recommended by the Department. Motion carried.*

### Region 4 – Moose

HD494-00 – Increase either sex quota from 4 to 6

*Action: **Lane** moved and **Murphy** seconded the motion to approve the Region 4 tentative Moose quotas as recommended by the Department. Motion carried.*

### Region 5 – Moose

HD512-20 – Reduce antlered bull quota from 3 to 1

*Action: **Walker** moved and **Mulligan** seconded the motion to approve the Region 5 tentative Moose quotas as recommended by the Department. Motion carried.*

### **Sheep**

The only proposed tentative quota change is in Region 3 and that is:

HD380-00 – increase the either sex quota from 2 to 3

*Action: **Mulligan** moved and **Lane** seconded the motion to approve the tentative Sheep quotas, inclusive of the HD380-00 either sex quota increase, as recommended by the Department. Motion carried.*

**Herbert** stated that the opening date for HD300 Sheep had been set in years past to after Labor Day weekend. To adhere to that stipulation, the dates this year would need to be September 7-13.

**Kurt Alt, FWP Region 3 Wildlife Manager**, said this opening date was driven by social issues over Labor Day weekend. As many as 160 permits were issued for Spanish Peaks and everyone showed up on Labor Day, crowding the trail heads and creating social issues. It was determined that to alleviate this problem, the opening date would be after Labor Day weekend. Spanish Peaks season has been closed for 3-4 years now, so the opening date is no longer an issue.

*Action: **Mulligan** moved to change the date to the 7<sup>th</sup> through the 16<sup>th</sup> of September for HD300. **Walker** seconded the motion and added that the regulations for these types of seasons include the wording “the Tuesday after Labor Day”. This is a tentative so it can be changed based on comments. **Walker** withdrew his second to the motion. No second – motion failed.*

**Alt** said he will assure HD 300 will be advanced to the 15<sup>th</sup> in next year’s tentatives.

**Goats** - No changes to current quotas.

*Action: **Brenden** moved and **Murphy** seconded the motion to approve the Goat quotas as recommended by the Department. Motion carried.*

#### **14. 2004 Lion Quotas – Tentative.**

##### **Region 1 - Lions**

HD100 – Reduce any legal lion from 18 to 15

HD102 – Reduce the either sex quota from 15 to 5

**Jim Williams, FWP Region 1 Wildlife Manger**, explained that the houndsmen keep them informed on status of lions. Lions are still coming back.

Don Clark, Libby, said the season should be closed. Three cat organizations recommend reducing cat quotas – they are not seeing tracks – there is a shortage of cats.

Worth Nixon, Libby, recommends supporting the reduction in quotas. He said he maintains harvest records as to how many, where, etc for comparison. He said this is the opinion of several houndsmen. He said numbers are down and there are no tracks. He said the average age of cats taken is 2 ½ years old. He said out-of-state hunters are buying residents tags and then taking them back out of state. He does not want to see non-residents even chasing them.

**Mulligan** said he would rather see the quota high and the kill be under the quota. He wants to hear more aggressive closing of the season. It is consistent overkill.

Don Clark said they have tried to call in and shut down the season, but all Commissioners are of the same opinion. It is difficult to close the season on a weekend.

Nevien Zugg, Elk Mountain Outfitters, said HD100 fills first and the early snows are there. He agreed that non-residents are hunting. He said there is bribery to get cats. He chose to only book 1 hunter last year to attempt to help with the cat population this year. He would like to see the quota set at 8.

Williams supports the quota of 5 with a potential increase next year. **Murphy** said he relies on Williams as well as the houndsmen.

*Action: **Murphy** moved and **Lane** seconded the motion to accept the R1 Mountain Lion quotas as recommended by the Department. Motion carried.*

**Mulligan** said he does not feel the EIS allows us to overrun the quotas. He asked if FWP is going to do anything to manage this quota rather than overrun it. He would like to know how many are killed after the 12-hour notice. The last 9 years we have gone over the quota. **Mulligan** said he does not feel the Commission should be establishing the quota, just see that they are met.

#### Region 2 - Lions

Missoula Special Management Area: reduce overall quota from 25 to 20

Concern was expressed about a zero quota in case someone accidentally shoots one – will that person turn it in? One cat will leave leeway. A FWP biologist said the Bitterroot has not had any mistaken identity to date and they recommended the quota. They are trying to double the population of lions. They have study objectives they wish to meet. The houndsmen there do not feel it is the time to harvest females.

*Action: **Murphy** moved and **Lane** seconded the motion to approve the Region 2 Mountain Lion quota as recommended by the Department.*

**Mulligan** asked about the Missoula Special Management Area. Some lion incidents have occurred in Missoula. It is a no-tolerance area and the quota is sufficient - lion numbers are low there too.

**Herbert** said that in the Blackfoot where the females are reduced from 1 to 0 we need to develop the quota. We don't need to hold at zero for an extended period of time, but we need to get some in there for the research project. The study area is to test how valid and population is declining.

*Action on Motion: Motion carried – four in favor – one opposed (**Brenden**)*

#### Region 3 - Lions

*Action: **Mulligan** moved and **Lane** seconded the motion to approve the Region 3 Mountain Lion quotas as recommended by the Department. Motion carried.*

#### Region 4 - Lions

*Action: **Lane** moved and **Walker** seconded the motion to approve the Region 4 Mountain Lion quotas as recommended by the Department. Motion carried.*

Region 5 - Lions

*Action: Walker moved and Mulligan seconded the motion to approve the Region 5 Mountain Lion quotas as recommended by the Department.*

**Ray Mule', FWP Region 5 Wildlife Manager**, said current quotas are not being filled so these are more in line with the take. Numbers of lions are lower.

*Action on Motion: Motion carried.*

Region 6 and Region 7 - Lions

*Action: Brenden moved and Walker seconded the motion to approve the Region 6 and Region 7 Mountain Lion quotas as recommended by the Department. Motion carried.*

**15. 2005 Moose & Sheep Auction Rules and Deer & Elk Auction/Lottery Rules – Tentative.**

**Herbert** brought the 2005 auction rules. Not proposing any changes from 2004 rules.

Proceeds for 2004 Auctions:

Sheep by FNAWS – \$160,000

Moose – Skyline - \$17,250

Elk – Elk Foundation - \$20,000

Mule Deer – Mule Deer Foundation - \$6,250

FWP proposes the adoption of the tentative as it is written. Bighorn Sheep and Moose are auction – Deer and Elk have the option of either an auction or lottery.

*Action: Mulligan moved and Walker seconded the motion to approve the initiation of the tentative ARM rule process for the auction of the Bighorn Sheep and Moose licenses, and the option of auction or lottery of the Deer and Elk licenses. Motion carried!!*

**16. Public Opportunity to Address Issues Not Discussed at this Meeting.**

Mary Ann Schnur suggested advising the public that sheep season will open before Labor Day.

Meeting adjourned at 4:50 p.m.

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**Dan Walker, Chairman**

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**M. Jeff Hagener, Director**